dated December 21, 1936, the petitioner and appellant, Frank Palko, will have the sentence of death by electrocution executed upon him on May 26, 1937, or within five days after said day.

3. That it is necessary to have a supersedeas and stay of execution issued in order to permit the petitioner and [fol. 6] appellant, Frank Palko, to pursue his appeal to effect in the Supreme Court of the United States.

Wherefore the petitioner and appellant, Frank Palko, prays that a supersedeas and stay of execution be issued in suitable form as provided by law and by the rules of the Supreme Court of the United States.

Dated at Bridgeport, Connecticut, this 10th day of May, 1937.

The Petitioner and Appellant, Frank Palko, by David Goldstein, His Attorney.

[File endorsement omitted.]

[fol. 7] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER GRANTING SUPERSEDEAS AND STAY OF EXECUTION—May 10, 1937

An appeal having been sued out to review the final judgment entered on March 4, 1937, affirming the judgment of the Superior Court for Fairfield County, Criminal Side, fixing the penalty of death by electrocution upon the defendant, Frank Palko, said penalty to be put into effect on May 26, 1937, or within five days after said day, according to a reprieve of his Excellency, Wilbur C. Cross, Governor of the State of Connecticut, dated December 21, 1936, and a proper bond for costs having been filed; it is therefore

Ordered that said execution be, and it hereby is, stayed, suspended, and superseded so that the appeal of the defendant may be prosecuted to effect in the Supreme Court of the United States; and to that end, it is further

Ordered that said execution shall be stayed, suspended, and superseded until the 15th day of December, 1937.

[fol. 8] Dated at Hartford, Connecticut, this 10th day of May, 1937.

Wm. M. Maltbie, Chief Justice of the Supreme Court of Errors of the State of Connecticut.

[fol. 9] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL—Filed May 11, 1937

Comes now the defendant-appellant, Frank Palko, by his attorney, and in connection with his petition for an appeal, says that there are errors in the record and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States, files the following assignments of error on which he will rely in his appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Errors of the State of Connecticut entered on March 4, 1937:

First. Said Supreme Court of Errors of the State of Connecticut erred in giving final judgment affirming the judgment of the Superior Court for Fairfield County, Criminal Side, holding that Section 6494 of the General Statutes of the State of Connecticut, Revision of 1930, is a constitutional act.

Second. Said Supreme Court of Errors of the State of Connecticut erred in failing to acquit the defendant-appellant of the crime of murder in the first degree.

[fol. 10] Third. Said Supreme Court of Errors of the State of Connecticut erred in failing to hold that Section 6494 of the General Statutes of the State of Connecticut, Revision of 1930, deprives the defendant-appellant of his life without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fourth. Said Supreme Court of Errors of the State of Connecticut erred in failing to hold that Section 6494 of the General Statutes of the State of Connecticut, Revision

of 1930, deprives the defendant-appellant of his life in violation of the latter's privileges and immunities as a United States citizen, which privileges and immunities are guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fifth. Said Supreme Court of Errors of the State of Connecticut erred in failing to hold that, upon the record and facts of this case, Section 6494 of the General Statutes of the State of Connecticut, Revision of 1930, places the life of the defendant-appellant twice in jeopardy and thus deprives him of his life without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Sixth. Said Supreme Court of Errors erred in failing to hold that, upon the record and facts of this case, Section 6494 of the General Statutes of the State of Connecticut, Revision of 1930, places the life of the defendant-appellant twice in jeopardy and thus deprives him of his life in violation of his privileges and immunities as a United States citizen contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 11] United States.

Prayer for Reversal

Wherefore, the defendant-appellant prays that said final judgment of the Supreme Court of Errors of the State of Connecticut dated March 4, 1937, affirming the conviction of the defendant-appellant of the crime of murder in the first degree, be reversed; that the Supreme Court of Errors of the State of Connecticut be directed to vacate said judgment; that the defendant-appellant be found not guilty of the crime of murder in the first degree; and that all other proper relief be granted to the defendant-appellant.

Dated at Bridgeport, Connecticut, this 10th day of May, 1937.

The Defendant-Appellant, Frank Palko, by David Goldstein, His Attorney.

[File endorsement omitted.]

[fols. 12-13] Bond on appeal for $500.00, approved, omitted in printing.

[fols. 14-15] *Citation, in usual form*, filed May 13, 1937, omitted in printing.

[fol. 16] IN SUPERIOR COURT OF FAIRFIELD COUNTY

STATE OF CONNECTICUT

vs.

FRANK PALKO

INDICTMENT

To the *Honorable Superior Court* for the County of Fairfield, State of Connecticut, Now in Session at Bridgeport, in Said County, for the Transaction of Criminal Business:

The Grand Jurors within and for said County, accuse Frank Palko, of the City of Bridgeport, in said County, of murder in the first degree, and charge that on the 30th day of September, 1935, at said Bridgeport, the said Frank Palko did wilfully, deliberately, with premeditation, and with malice aforethought, shoot and kill Thomas Kearney, against the peace and contrary to the form of the statute in such case made and provided.

A true bill,

Howard L. Shaff, Foreman.

[fol. 17] IN SUPERIOR COURT OF FAIRFIELD COUNTY

[Title omitted]

DOCKET ENTRIES

1935.

Nov. 12th. Pleaded Not Guilty

1936.

Jan. 24. Defendant found guilty of murder in second degree.

Jan. 28. Permission to appeal granted—John A. Cornell, Judge.

Jan. 28. Appeal to Supreme Court of Errors.

July 30. "Error, and new trial ordered."

Oct. 15. Defendant found guilty of murder in first degree.

[fol. 18] IN SUPERIOR COURT OF FAIRFIELD COUNTY

Present, Hon. Arthur F. Ells, Judge

STATE

vs.

FRANK PALKO

JUDGMENT FILE-

Upon an indictment presented by the Grand Jury, duly summoned, impanelled and sworn, within and for said County of Fairfield, charging that on the 30th day of September, 1935, at Bridgeport, within said County, the said Frank Palko, now in the custody of the Sheriff of said County, with *force and* arms did kill and murder Thomas Kearney, then of said Bridgeport, and did then and there commit the crime of murder in the first degree, as per indictment on file.

This action first came before this Court at its term held at said Bridgeport commencing on the third Tuesday of September, 1935, when the prisoner appeared and for plea said "Not Guilty", and elected trial by jury.

Thence said cause came to the term of this court held on the second Tuesday of January, 1936, when the prisoner, then in the custody of the sheriff again appeared; and after a full hearing the case was committed to the jury, who, on January 24th, 1936, returned a verdict of "Guilty of Murder in the Second Degree."

It was therefore considered by the court that the prisoner, Frank Palko, was guilty of murder in the second degree, and the court on January 28th, 1936, sentenced the prisoner to be confined at hard labor in the Connecticut State Prison [fol. 19] at Wethersfield for the term of his natural life.

And on said date the Judge presiding at the trial, pursuant to notice of intention to appeal to the Supreme Court of Errors, duly filed by the State of Connecticut, granted in writing permission to the State of Connecticut to appeal from said judgment to the Supreme Court of Errors.

Thereafter on February 5th, 1936, the State of Connecticut duly appealed to the Supreme Court of Errors.

Said appeal having been fully heard and considered by said Court at its term held in Hartford on the first Tuesday

of June, 1936, said Supreme Court, on July 30th, 1936, rendered its judgment, finding error in the said trial of the said Frank Palko, and ordered a new trial.

Said cause thence came to the present term of this court, when the said Frank Palko, now in the custody of the sheriff of said Fairfield County, appeared, and after a full hearing, the case was again committed to the jury, who, on October 15th, 1936, returned a verdict of "Guilty of Murder in the First Degree."

It is therefore considered that the accused is guilty of murder in the first degree in the manner and form as charged in said indictment.

The court thereupon on said Oct. 15th, 1936, sentenced the prisoner, Frank Palko, to be remanded into the custody of the Sheriff of Fairfield County, and within twenty days from the date of said sentence to be by said sheriff conveyed to the Connecticut State Prison in the town of Wethersfield, in the County of Hartford, and there delivered into the custody of the Warden of said prison, to be kept by him until Monday, the 15th day of February, 1937, on which [fol. 20] day, or within five days after said day, before the hour of sunrise, and within an enclosure within the prison walls so constructed as to exclude the public view, and prepared for that purpose, under the direction of the Warden of the State Prison, and the Board of Directors thereof, and in accordance with law, the said Frank Palko, to have the punishment of death inflicted upon him by electrocution.

By the Court.

Clarence R. Hall, Assistant Clerk.

Date of Sentence Oct. 15, 1936.

Reprieve until May 26, 1937.

Appealed to Supreme Court of Errors Mar. 4 1937. Judgment of Supreme Court. "No Error".

[fol. 21] In Superior Court of Fairfield County

Finding

* * * * * * *

II

The Defendant offered evidence to prove and claimed that he had proved the following facts.

* * * * * * *

80. The accused was indicted for murder in the first degree, pleaded not guilty, was tried by a jury which was sworn on January 16, 1936, acquitted of murder in the first degree, and convicted of murder in *the second* degree on January 24, 1936, and sentenced to imprisonment for life on January 28, 1936.

81. Over the objection of the accused but allegedly in accordance with the Statutes of the State of Connecticut, the State appealed the case to the Supreme Court of Errors, which found error and ordered a new trial as reported in 121 Connecticut 670.

82. On October 8, 1936, a second jury was sworn and after hearing, the accused was found guilty of *murder in the* first degree and was sentenced to death *on* October 15, 1936.

83. All of the proceedings set forth in paragraphs 80, 81 and 82 were pursuant to one and the same indictment for one and the same offense.

* * * * * * * *

VI

Prior to the commencement of the examination of any [fol. 22] veniremen in this trial, the Defendant moved that the indictment be dismissed on the ground that the trial of this action would result in placing the Defendant twice in jeopardy for the same offense. The grounds stated in said motion are as follows:

1. That a trial of this action would place the accused twice in jeopardy for the same offense since he has already been convicted of the crime of murder in the second degree, arising out of the same accusation against him in a former trial;

2. That the indictment in the above entitled action arises out of the same state of facts or transaction upon which the accused was tried and convicted of murder in the second degree by a jury in a former trial in this Court.

3. That a trial of this action will result in the accused being placed twice in jeopardy for the same offense contrary to Article 1, Section 9 of the Constitution of the State of Connecticut, and contrary to the Fourteenth Amendment of the Constitution of the United States.

The motion was denied, and the Defendant duly excepted.

VII

After the jury was sworn, and before any evidence was taken, the Defendant moved that the indictment against him be dismissed on the ground that a trial of this action would place the Defendant twice in jeopardy for the same offense, in violation of the Constitution of the State of Connecticut and the Constitution of the United States since the Defendant had already been convicted of murder in the second degree in a former trial for the same offense. The grounds for said motion were the same as set forth in the motion to dismiss the indictment in Part VI of this Finding. [fol. 23] The motion was denied, and the Defendant duly excepted.

[fol. 24] In Supreme Court of Errors of Connecticut

[Title omitted]

Assignment of Errors

The Court erred:

. . . . . .

5. In refusing to grant the motion of the Defendant that the indictment against him be dismissed on the grounds stated in said motion and more specifically set forth in Part VI of the Finding.

6. In refusing to grant the motion of the Defendant that the indictment against him be dismissed on the grounds stated in said motion and more specifically set forth in Part VII of the Finding.

. . . . . .

The Appellant, by David Goldstein, Johnson Stoddard, His Attorneys.

[fol. 25] IN SUPREME COURT OF ERRORS OF CONNECTICUT

STATE OF CONNECTICUT

vs.

FRANK PALKO

121 Conn. 669

Maltbie, C. J., Hinman, Banks, Avery and Brown, Js.

Argued June 11th. Decided July 30th, 1936.

Indictment charging the defendant with the crime of murder, brought to the Superior Court in Fairfield County and tried to the jury before Cornell, J.; verdict and judgment of guilty of murder in the second degree, and appeal by the State. Error and new trial ordered.

William H. Comley, State's Attorney, with whom, on the brief, was Lorin W. Willis, Assistant State's Attorney, for the appellant (State).

David Goldstein, with whom were Johnson Stoddard, Public Defender, and William Dorkin, for the appellee (defendant).

OPINION—July 30, 1936

BROWN, J.:

By its brief the State has limited the errors assigned upon this appeal to six, the first relating to the court's charge to the jury, and the others to rulings upon evidence. Upon the trial the State offered evidence to prove and claimed to have proved these facts material to the claimed error in the charge: Late in the evening of September 29th, 1935, the accused, taking with him a revolver which he had possessed since obtaining it from Ryan's Tavern several months before, with Frank Burke, left their apartment at #590 Fairfield Avenue in Bridgeport and going to Gilman's Music Store at #243 Fairfield Avenue, just after midnight broke in the show window thereof, from which each seized and carried away a radio, departing by different routes on the return to their apartment. In breaking the plate glass window with the revolver, the [fol. 26] grips thereof were broken off and were found there shortly after. When the accused had reached a point on the

southerly side of Golden Hill Street, an officer stepped out from each side of a police car which had drawn up to him, the one on the left laying his hands on him and asking where he was going with the radio. Thereupon the accused, who was carrying his revolver in the sleeve of his coat, let it drop down into his hand and fired one shot into this officer, and then turning as the other came near, fired a shot into him. He then ran west some fifty feet, where another police car drew up, and as an officer started to get out, he fired a shot into it which lodged in the cushions of the rear seat. Dropping the radio, the accused then ran on by streets and back yards toward his apartment, pausing behind a wall to recover his breath and reload his revolver, after which he walked the rest of the way. Upon his arrival, he told Thomas Iwanicki that as he had approached the apartment, another police car had come up and that if either of the policemen in it had "made a break" for him, he would have shot them too. At this time, shortly after 1 o'clock in the morning, and also between 2 and half past that morning, the accused appeared to be sober. Wilfred Walker, one of the officers shot, and Thomas J. Kearney, the other, for whose murder the accused was on trial in this proceeding, each died within a few hours from his wound inflicted by the accused. At the time of the killing the accused was on parole from Elmira Reformatory where he had been sentenced for rape.

The accused offered evidence to prove and claimed to have proved these facts material in this connection: On September 29th, 1935, the accused, who shared an apartment on Fairfield Avenue with Frank Burke and Thomas Evans, knew this avenue to be well illuminated at night and that police headquarters was located thereon. From [fol. 27] about 3 o'clock on that afternoon the accused and Burke continued to drink rye whiskey in the apartment until 6 o'clock when they were out and had a sandwich for supper, and then returned for a few minutes, doing more drinking. After visiting two cafes, where the accused drank four glasses of beer, they returned to the apartment at 8 o'clock and started to drink again. Shortly thereafter, the accused became intoxicated and does not recall any of the circumstances relating to the breaking and entering into Gilman's Music Store, or the shooting of the police officers. And he became so intoxicated by shortly after 9 o'clock that

he does not recall seeing Jack Burke, who came to the apartment shortly before 3 o'clock on the morning of September 30th, 1935, or have any recollection of anything further that occurred until the police arrived in his room at that hour. The accused first suspected he might be involved in any way in the breaking and entering or in the shooting of the two officers, at half past 6 that morning when Evans told him and Frank Burke that they were involved therein. It was a part of the accused's revolver which had been in his possession prior to September 29th, 1935, which was found in the entrance of Gilman's Music Store on the morning of the following day.

The State contends that upon the situation so disclosed, the court's charge concerning the essential elements of premeditation and deliberation in the crime of first degree murder was inadequate, inaccurate, and misleading to the jury. Its claim is that while the definitions used by the court in this connection for the most part at least, may be supported by authority, and are properly applicable to the case of the seemingly law-abiding citizen who for motives difficult to trace, and under impulses open to contradictory interpretation, kills an enemy or a friend, in- [fol. 28] volving some transition, some traceable mental reaction, from a man to whom murder is an unthought of deed to one intent upon killing, the same does not hold true in such case as this, where the State's evidence discloses a gunman setting out armed with a loaded revolver to commit burglary, prepared in advance to kill if necessary either to accomplish the crime or to make good his escape. Obviously an instruction sufficient in the former case might be entirely inadequate for the latter. The question is whether the court's charge as given was sufficient upon these issues.

The trial court in a general explanation of the elements of first degree murder instructed the jury that to constitute premeditation there must be between the time the perpetrator forms an intention to kill and the instant when he carried out such intention "an interval of time during which he gave thought to and reflected upon his purpose sufficiently to know what he was doing and what the probable effect of his doing it would be upon his victim. It will occur to you that where a man suddenly makes up his mind to kill another and instantly shoots or otherwise fatally

injures him, there is no opportunity for such consideration of what he is doing to enable him to comprehend the nature of his act or the result of it to the object of his attack. In such case there can be no premeditation since intent to kill and the performance of the act of killing coincide and practically take place at the same instant." The trial court then repeated the charge as to the necessity of an interval of time elapsing between the formation of the intent and the commission of the crime, adding that the court does not attempt to say that any particular period of time shall have elapsed provided it is sufficient to afford the perpetrator sufficient opportunity for thought as to his purpose, and that in some cases this may be a very short time and in others a longer period.

[fol. 29] In view of the claims of the parties the effect of this charge, particularly in the use of the word "reflection" and the emphasis placed by the trial court upon the application of the principle as applied to a sudden killing, would tend to center the attention of the jury upon the brief interval that passed between the time when the officer placed his hand upon the arm of the accused and the shooting. Had the trial court gone on to give to the jury adequate instructions as to the application of the general principles it had stated, to the evidence in this case, this portion of the charge might not have constituted reversible error. Later in the charge the court did refer to the State's claim that the fact that the accused at the time of the shooting was escaping with stolen property afforded ground for the inference that it was not done upon sudden impulse without opportunity for reflection, but rather as the outcome of a formed design to shoot anyone who might interfere with his escape, with full opportunity to comprehend the character and probable result of such a purpose and that the shooting of Kearney was but the result of his alertness in carrying out this plan. But this statement of the claim of the State omitted the vital factor that the defendant had set out armed to commit a crime, nor did it in any way comment on this claim or the bearing which the facts would have if the jury found them proven, upon the issue of premeditation.

Thereafter the trial court stated that it was in evidence that a car stopped beside the defendant, somebody alighted and put his hand on the shoulder of the accused and asked where he was going with the radio; and it then charged

the jury as follows: "Now, I have already told you gentlemen, that the time required to form a specific intent to kill, to premeditate and to deliberate, may be longer, it may be short, but it must be sufficient for the person involved to know what kind of an act he was about to perform, [fol. 30] and its probable effect upon his victim. Now, I am only suggesting this to you, I am not suggesting any conclusion to you, but I am suggesting to you that you consider the hypothesis that I suggested to you, whether or not, if this statement is true, that the accused saw the scout car as it approached him, before it stopped, and as he says: 'Then I let the gun slip from my sleeve into my hand, and I turned around and fired.' Now, gentlemen, again, I am suggesting no conclusion to you, but if you find the facts established, and whether they are established or not you are to decide, and if you find them established you should consider further the length of time involved in these operations; whether or not there is any evidence in the fact that the gun slipped from his sleeve into his hand, after seeing the car stop, which would tend to establish what the intention of the accused was, and whether or not he had the specific intention to kill, and to premeditate, bearing in mind always that the fact must be established beyond a reasonable doubt."

The effect of this charge could hardly have been other than to leave with the jury the impression that in determining whether the murder was premeditated they were to confine their attention to the brief interval of time between the moment when the officer accosted the defendant and the shooting. It is of course sound law that an interval of time sufficient for thought as well as action must exist, but it was error for the trial court to leave with the jury the impression that in case of an armed burglar who is stopped in his efforts to escape with the stolen property, in determining whether or not there was premeditation they are to regard only the incalculable moment between his realization of the threat of arrest and the pulling of the trigger ready to his hand for that very purpose. He has [fol. 31] gone out for the double purpose to burglarize and to escape. It would be as absurd to say that whether he plans to steal is to be determined only as of the moment when he has his hand on the loot, as to say that only the interval of time between the moment when the criminal is accosted by the officer and the instant of the shooting is to be

considered in determining whether the crime was premeditated. The charge in thus confining the attention of the jury in determining whether premeditation existed to this brief moment of time, and giving no instructions as to the significance of the conduct of the accused in setting out armed under the circumstances as claimed by the State was inadequate for their guidance. From it they could well have understood that even though they found the killing occurred as contended by the State it would not constitute murder in the first degree. Upon quite similar facts, in the case of a criminal setting out armed to commit a crime and secure his retreat, who in the course of the enterprise killed an officer attempting to arrest him and was found guilty by the jury of murder in the first degree, we said that "the verdict reached by the jury was the only verdict reasoning minds could have reasonably reached upon the evidence." State v. Chapman, 103 Conn. 453, 469, 130 Atl. 899; see also State v. Simborski, 120 Conn. 624, 629, 182 Atl. 221. There was reversible error in the charge as to premeditation.

The State claims that the court erred in excluding on its cross-examination of the accused, questions as to his possession of the revolver with which he shot Kearney. These were claimed to show that the accused had obtained it by burglarizing Ryan's Tavern, to affect his credibility. The accused by taking the stand in his own behalf waived the privileges accorded to him under the law as a person accused of crime, and became as any other witness and sub- [fol. 32] ject to the same tests of *cross-examination*. Fitzpatrick v. United States, 178 U. S. 304, 315, 316, 20 Sup Ct. 994. He therefore had rendered himself subject to cross-examination upon such acts of misconduct as indicate a lack of veracity; Shailor v. Bullock, 78 Conn. 65, 70, 61 Atl. 65; and that such cross-examination might establish that the accused had been found guilty of another crime is no reason for its exclusion. Harper v. State, 106 Ohio St., 481, 140 N. E. 364; 3 Wharton, Criminal Evidence (11th Ed.) Sec. 1387. The commission of statutory burglary falls within this category. This crime is one involving moral turpitude. Drazon v. New Haven Taxicab Co., 95 Conn. 500, 111 Atl. 861. This latter fact, however, obviously affords no meritorious basis for the suggestion made by counsel for the accused in objecting to these questions, that because of sec. 5582 of the General Statutes, providing that a witness is not

disqualified because of conviction of crime but that such conviction may be shown to affect his credit, such fact could only be brought out by offering the record of his conviction. The purpose of the statute was to remove the common-law disqualification of a witness because of a conviction of crime with a provision, however, that such conviction might be shown to affect his credit. It has nothing to do with the method by which such conviction shall be shown. The record indicates that the court adopted this suggestion as a reason for excluding the questions. This was error. The admission of such evidence is in a measure within the discretion of the court. Spiro v. Nitkin, 72 Conn. 202, 205, 44 Atl. 13. While we should hesitate to hold that the court's ruling, upon this record, constituted a proper exercise of its discretion, the adoption of the above reason therefor of itself rendered it erroneous.

[fol. 33] The State further claims that the court erred in excluding its question on cross-examination of the accused, seeking to bring out that the loaded revolver and money found upon his person when arrested in Buffalo, New York, on October 29th, 1935, were obtained by a robbery committed by him subsequent to the killing of Kearney, for the purpose of affecting his credibility. Under the rule in Shailer v. Bullock, supra, this evidence was admissible for the purpose claimed, and upon the whole situation shown by the record, the court's exclusion of it constituted error.

The court's refusal to permit the State to show through its witness Sergeant Carroll, who participated in the arrest of the accused at Buffalo, the circumstances attending the arrest and what the accused had upon his person at the time, is also assigned as error. It was conceded that the accused had fled following the shooting of Kearney, and that he was in the course of that flight and evading arrest when apprehended by Carroll and the other officers at Buffalo, and that at the time he had in his possession a revolver, a blackjack and a substantial sum of money, though he had none of these identical articles at the time of the crime here charged. The State claimed the right to prove these facts as bearing upon the conduct and guilty knowledge of the accused. Upon the whole situation shown by this record a majority of the court hold that the trial court's exclusion of this evidence was within its discretion.

The State claims that the court erred in excluding the testimony of its witness Officer Bray of a confession made by the accused after his arrest in Buffalo. He made the statement while incarcerated in the police station, after the officer had told him the police had obtained the entire story from Evans and Jack Burke and wife who were locked up in Bridgeport, which was untrue, and that he had better tell the truth. He was not cautioned that he did not have to say [fol. 34] anything that might be used against him. The officer also testified that no promise of reward or threat was made to the accused to induce the statement. His testimony was the only evidence upon the subject. The record and the accused's brief indicate four grounds relied upon for excluding the evidence. The first, because it was made while he was in custody, is not based upon authority. The established rule is to the contrary. Commonwealth v. Chance, 174 Mass. 245, 249, 54 N. E. 551; People v. Owen, 154 Mich. 571, 118 N. W. 590; Balbo v. People, 80 N. Y. 484; Hopt v. Utah, 110 U. S. 574, 4 Sup. Ct. 202; 2 Wharton, Op. Cit., Sec. 610; 1 R. C. L. 565, Sec. 111; 16 C. J. 719, Sec. 1473. The same is true of the second, that he was not warned as to his constitutional rights. The test of admissibility is whether the confession was voluntary, and not whether the accused was well advised. State v. Castolli, 92 Conn. 58, 67, 101 Atl. 476; State v. Hand, 71 N. J. L. 137, 58 Atl. 641; 2 Wharton, Op. Cit. Sec. 627; 16 C. J. 723, Sec. 1482. The third, because the officer said to the accused that he had better tell the truth, is contrary to the great weight of better reasoned authority. State v. Gee Jon, 46 Nev. 418, 428, 211 Pac. 676, 678, and cases cited; 2 Wharton, Op. Cit., Sec. 625, 1 R. C. L. 555, Sec. 102; 16 C. J. 721, Sec. 1476. As has been well said, such advice "cannot possibly vitiate the confession, since by hypothesis the worst that it can evoke is the truth and there is thus no risk of accepting a false confession." 2 Wigmore, Evidence (2d Ed.) Sec. 832. The fourth is because the officer represented that certain parties connected with the affair had made statements and were under arrest.

One claim thereunder is that since these untrue statements induced the accused to confess, the confession was involuntary and so inadmissible. This is not the law. "The [fol. 35] object of evidence is to get at the truth, and a trick which has no tendency to produce a confession except one in accordance with truth is always admissible." Common-

wealth v. Cressinger, 193 Pa. St. 326, 337, 44 Atl. 433. See also State v. Willis, 71 Conn. 293, 307, 41 Atl. 820; Price v. State, 18 Ohio St. 418; Fife v. Commonwealth, 29 Pa. St. 429, 435; 2 Wigmore, Evidence (2d Ed.) Sec. 841; 2 Wharton, Op. Cit., Sec. 623. The other is that since he may have made the confession in order to assume responsibility and exonerate Frank Burke, it is inadmissible. But the rule is well established that one's motive in confessing is of no importance, provided it does not result from threats, fear, or promise made by persons in actual or seeming authority. Jones v. State, 18 Ga. App. 310, 89 S. E. 347; State v. Griffin, 48 La. Ann. 1409, 20 So. 905; State v. Staley, 14 Minn. 105, 113; 16 C. J. 719, Sec. 1470. Furthermore, the court did not find, and could not reasonably have found upon this record, that Palko confessed because of his promise to assume the blame. Nor is there anything to indicate that his alleged assumption of guilt was not based upon actual guilt. His defense involved no affirmation of innocence of the act of firing the fatal shot, but was confined to one of no knowledge thereof by reason of intoxication.

The court in excluding the confession did not detail all of its reasons therefor. It did, however, suggest as such, the accused's incarceration, his claimed promise to take the responsibility, the false statements made by Bray, "and all the other surrounding circumstances." Although such a ruling is an exercise of the court's discretion, a question of duty is involved, and its action is therefore reviewable upon appeal. State v. Willis, 71 Conn. 293, 313, 41 Atl. 820; State v. DiBattista, 110 Conn. 549, 563, 148 Atl. 664. In view of the undisputed evidence that nothing occurred [fol. 36] in obtaining this confession to render it involuntary, and of the court's reliance in part at least upon legal principles which were incorrect, as we have above indicated, its exclusion of the evidence was erroneous. Containing, as the confession did, a detailed recital, not only of the fatal shooting, but of all of Palko's other acts on the night in question, its importance to the State's case to refuse his defense of intoxication rendering him totally oblivious throughout this period, is apparent. Nor was this obviated by the testimony of Jack Burke and Evans, that the accused had admitted to them the doing of these acts, for the jury might well have disbelieved them, particularly in view of the court's comment in the charge upon their testimony,

but found the confession to be true. This ruling constituted reversible error.

In view of our conclusion that the confession should have been received in evidence, the remaining error assigned, relating to the court's exclusion of cross-examination of the accused upon facts contained in the confession, becomes immaterial.

There is error and a new trial is ordered.

In this opinion all the judges concurred, except that Maltbie, C. J., and Brown, J., were of the opinion that it was error to exclude the evidence concerning the arrest of the defendant, and Hinman and Avery, Js., dissented from the decision that the confession made by the accused should have been admitted in evidence.

[fol. 37] In Supreme Court of Errors of Connecticut

State of Connecticut

v.

Frank Palko

Fairfield County, February Term, 1937

Indictment charging the defendant with murder in the first degree, brought to the Superior Court in Fairfield County, where the defendant's motion for a change of venue was denied. Ells, J., and the issues were tried to the jury before Ells, J.; verdict and judgment of guilty, from which the defendant appealed.

No error.

David Goldstein, with whom, on the brief, was Johnson Stoddard, for the appellant (defendant).

William H. Comley, State's Attorney, with whom, on the brief, was Lorin W. Willis, Assistant State's Attorney, for the appellee (the State).

Opinion—April 7, 1937

Avery, J.

The accused was indicted by a grand jury of the county of Fairfield, charged with murder in the first degree in the

wilful, deliberate and premeditated killing of Thomas Kearney, at Bridgeport, September 30th, 1935. Subsequently, at the January term of the Superior Court in Fairfield County, he was brought to trial before the court and a jury which resulted in a verdict of guilty of murder in the second degree. The verdict was returned on January 24th, 1936, and on January 28th the court sentenced the prisoner, as provided by law, to confinement in the Connecticut state prison at Wethersfield for the term of his natural life. On the same day, pursuant to a notice of intention to appeal, filed by the State, the trial judge granted in writing permission to the State to appeal; and, thereafter, on July 30th, 1936, this court rendered its judgment finding error in the instructions of the trial court to the jury upon the question of premeditation and also on certain rulings upon evidence, and a new trial was ordered. State v. Palko, 121 Conn. 670, 186 Atl. 657. The case then came to the September term of the Superior Court in Fairfield County [fol. 38] and was tried before the court and a jury; and, on October 15th, 1936, the jury returned a verdict of guilty of murder in the first degree; and the court thereupon imposed upon the accused a sentence of death as provided by law. From this judgment the defendant has appealed.

In the assignments of error, it is claimed that the trial court erred in refusing to set aside the verdict; in its instructions to the jury; in certain rulings upon evidence; in refusing to grant a change of venue; and, finally, that the second trial placed him twice in jeopardy for the same offense in violation of his constitutional rights under the state and federal Constitutions. The last two assignments are the only ones which are seriously pressed upon this appeal either in brief or in argument. As the case, however, is a capital one, we have examined the entire record under all the assignments.

The denial of the motion to set aside the verdict is to be decided by determining whether the jury might reasonably have found that the evidence established beyond a reasonable doubt the guilt of the accused as charged with the commission of the crime of murder in the first degree by evidence equivalent to that of two witnesses. There was evidence from which the jury might have found beyond a reasonable doubt that late in the evening of September 29th, 1935, accompanied by Frank Burke, the accused took with

him a revolver which he had possessed for several months, left his apartment at 590 Fairfield Avenue in Bridgeport and went to Gilman's Music Store at 243 Fairfield Avenue; and, just after midnight, broke into a show window. Each took a radio and carried it away, departing by different routes. In breaking the plate glass window with the revolver, the grips were broken and were found there shortly [fol. 39] after. Stamped upon these grips were the letters "U. S." which was the trade name of the 32 caliber revolver possessed by the accused. The accused proceeded east on Fairfield Avenue to Broad Street, thence northerly to Elm Street, thence west to Harrison Street, thence north to Golden Hill Street, and west along the south sidewalk of that street. As he was so proceeding on Golden Hill Street, a police radio car, occupied by Sargeant Kearney and a patrolman, drew up at the south curb. One of the officers stepped out of the car on the left-hand side and laying his hand on the shoulder of the accused, inquired where he was going with the radio. The other officer stepped out of the right-hand side of the car and proceeded to where the defendant was standing. As the first officer accosted the accused, he was shot by the latter who then turned to the other officer and shot him. The accused stated in a confession in evidence that if he had not been on parole he would not have shot the officers. Thereafter, the accused ran west on Golden Hill Street, about fifty feet, when another police car approached and as the officer therein started to alight, the accused fired a shot, the bullet lodging in the cushion of the rear seat of the car. The accused dropped the radio onto a rampway leading to a garage on the south side of Golden Hill Street, then ran west to Courtland Street, thence among several buildings and backyards to Fairfield Avenue, and walked west to the rear entrance of the apartment from whence he had started. As the result of the wounds inflicted Sergeant Kearney died the following day.

These facts were abundantly supported by the testimony in the amount required under our law. The statutory requirement for conviction in a capital case that there shall be the testimony of at least two witnesses or its equivalent, [fol. 40] General Statutes, Sec. 6479, does not mean that there must be two or more witnesses testifying to the same fact or to each fact. "If there be two, or more witnesses, each testifying to different parts of the same transaction, or

to different circumstances attending it, and all concurring to prove the crime alleged; this will be sufficient to warrant a conviction, though there should not be two witnesses to any one fact." State v. Schutte, 97 Conn. 462, 467, 117 Atl. 508. The evidence justified the inference that the accused had the revolver in his possession and intended to shoot and to kill, if necessary, to prevent his capture. The jury could reasonably have found a design on the part of the accused to effect the death of any person, if necessary, to prevent his capture and effect his escape and that the shooting of the officer was wilful, deliberate and premeditated. State v. Simborski, 120 Conn. 624, 629, 182 Atl. 221; State v. Chapman, 103 Conn. 453, 468, 130 Atl. 899. The trial court did not err in denying the accused's motion to set aside the verdict.

In his brief, the accused has selected isolated parts of the charge and claims that the jury may have been prejudiced thereby. It is sufficient to dispose of the claims of the accused in reference to the charge by the fact that the assignments of error in no way comply with the rules. The rules (Practice Book, Sec. 362) require that all assignments of error shall be specific. The assignment of error in this case alleges that the court erred "in failing to charge the jury in an adequate and sufficient manner to fully present the issues and questions of law involved so that the jury could * * * return a verdict in accordance with the law." Such a general assignment does not comply with our rule and does not merit consideration. "It should be distinctly and specifically stated in what respects and how [fol. 41] these general objections apply." Beitler v. Rudkin, 104 Conn. 404, 405, 133 Atl. 214; State v. Tripp, 84 Conn. 640, 643, 81 Atl. 247.

In the brief, a sentence and a part of a sentence are taken from the charge, without reference to the context or the remainder of the court's instructions, and claimed to have been erroneous. The trial court, in informing the jury that they were not exclusive judges of the credibility of witnesses, among other things observed: "Necessarily, gentlemen, if you find that there are any witnesses in this case who might have some motive for testifying as they have testified, either wholly or in part, you should take such a fact into consideration in weighing the testimony of such person, because in so far as it may be affected, of course,

in so far as it is affected, it is less reliable." The jury could not have understood the whole sentence as informing them otherwise than if the jury found that any witness had a motive for testifying falsely they had a right to consider that in weighing his testimony, and the fact that the accused appearing as a witness has a vital interest in the result of the trial is not an exception to this rule. State v. Schleifer, 102 Conn. 708, 725, 130 Atl. 184.

At another point in the course of the charge, the court stated: "There is no evidence in the case which would excuse, justify, mitigate, or extenuate the shooting or slaying of Sergeant Kearney, so that if you find the accused not guilty of murder in the first degree, if you find that it was he who shot and killed Sergeant Kearney, he will be guilty of murder in the second degree, unless you also find that he was in such a condition of intoxication at the time he shot Sergeant Kearney that his mind could not conceive or entertain malice aforethought, as I have explained the [fol. 42] meaning of that term to you, in which case he would be guilty of manslaughter." The brief of the accused seeks to take the first part out of this sentence but it must be considered with reference to what immediately followed and to the charge as a whole and it is evident that the jury could not have understood it as meaning otherwise than that there was no evidence in the case of a justifiable or excusable homicide to take from the killing of the officer the condemnation of an unlawful homicide; and the court then proceeded to instruct the jury with regard to three possible verdicts which they might return in case they found that the accused did the shooting. There is no indication in the finding that there was evidence of any circumstances of excuse or justification and the charge was not erroneous. State v. Chapman, 103 Conn. 453, 485, 130 Atl. 899. In their brief, counsel for the accused concede that the charge of the court as a whole was eminently fair to the accused. We do not find prejudicial error in the two passages to which reference is made in appel-an-'t brief.

The accused assigns error in three rulings upon evidence. Lieutenant Bray of the Bridgeport police department was called as a witness by the State and testified that the accused made a confession to him while under arrest in the city of Buffalo. In this confession, the accused described breaking into Gilman's Music Store and the shooting of the police

officer which occurred on Golden Hill Street shortly thereafter. After recounting in considerable detail his participation in these events, the accused stated that "before the shooting of the officers, we broke into a gas station on John Street near West Avenue." Objection was directed to this concluding sentence of the claimed confession, the substance of the objection having been that it was immaterial and [fol. 43] tended to prejudice the accused by showing his participation in another crime unconnected with the crime for which he was being tried. The objection was properly overruled by the court. The part of the confession to which the objection was specifically directed contained in itself an admission of the shooting of the police officer; and that admission would be unintelligible if the remainder of the sentence were omitted. The entire narrative of the accused so far as it bore upon the crime of which he was charged was admissible, and the repetition of all he said with reference to that crime cannot be considered as an attempt on the part of the State to prove an independent and distinct offense. Commonwealth v. Weston, 297 Pa. St. 382, 147 Atl. 79, 82; People v. Loomis, 178 N. Y. 400, 405, 70 N. E. 919, 921; 4 Wigmore, Evidence (2d Ed.) Sec. 2100. "That evidence tends to prove the commission of other crimes by the accused does not render it inadmissible if it is otherwise relevant and material." State v. Simborski, supra, 631; State v. Chapman, supra. 481.

A similar ruling was made by the court in admitting the testimony of Sergeant Carroll, of the Bridgeport police department, who testified that later at Buffalo the accused repeated the confession previously made to Lieutenant Bray; and stated in the same language that prior to breaking and entering into the Gilman Music Store he had broken into a gasoline station on John Street near West Avenue. In rebuttal, the State called, as a witness, Daniel J. Hurley, who testified that he lived opposite a gasoline station on John Street and that about 11 o'clock in the evening of September 29th, from a window in his house, he was able to see the interior of the gasoline station; that he there saw a man moving about who resembled the accused, and that he had a bulge in his left hip pocket and described in [fol. 44] some detail his movements, and the manner in which he gained entrance. This testimony was objected to as not proper rebuttal, but was admitted by the court over

the objection of the accused. The accused had taken the stand as a witness in his own behalf and his contention was that he had been drinking intoxicating liquor that afternoon and evening and was so intoxicated that he had no recollection of what occurred at midnight that night when the policeman was shot. It was permissible for the State in rebuttal of this testimony of the accused to show that about an hour before the shooting, the accused had been acting as would a person in possession of his faculties. That he had happened to be so seen while robbing another building did not render the evidence inadmissible.

Prior to the trial, the accused moved the court for a change of venue on the ground that there had been such wide publicity of a nature so derogatory to him that a fair trial by an impartial jury could not be had in Fairfield County. The burden of showing this is upon the mover of the change of venue. State v. Chapman, supra, 470. The power to grant a change of venue is to be exercised with caution and rests in the court's sound discretion, which is final unless it appears clearly that it has exercised its discretion unreasonably. State v. Cianflone, 98 Conn. 454, 461, 120 Atl. 347; State v. Luria, 100 Conn. 207, 209, 123 Atl. 378. The only way by which the question could properly be presented to us as to whether the trial court erred in denying the motion would be upon a finding. State v. Chin Lung, 106 Conn. 701, 717, 139 Atl. 91. We have, however, examined the transcript of evidence offered in support of the motion and we cannot say that the trial court unreasonably exercised its discretion in denying it.

The principal contention of the accused on this appeal is [fol. 45] that General Statutes, Sec. 6494, which permits the State to appeal in a criminal case with the permission of the trial court, is in violation of Sec. 9 of Article First of the Constitution of Connecticut and Sec. 1 of Article XIV of the amendments to the Constitution of the United States; his contention being that the jury on the first trial, having found him guilty of murder in the second degree, thereby acquitted him of the charge of murder in the first degree and that the appeal by the State to the Supreme Court of Errors and the new trial upon the same indictment for the same offense exposed him to double jeopardy in violation of these constitutional provisions. So far as the Constitution of Connecticut is concerned, it contains no such

provision against double jeopardy, which is found in the constitutions of many States and in Article V of the amendments to the Constitution of the United States; and in State v. Lee, 65 Conn. 265, 30 Atl. 1110, this court held that the provisions of the General Statutes permitting an appeal by the State did not violate any provision of the Constitution of Connecticut. The basis of the reasoning of the court in that case is that there is but one jeopardy and one trial; that where material error is committed on a trial and a new trial is ordered by the appellate court upon the State's appeal, the second trial is not a new case but is a legal disposal of the same original case tried in the first instance. It would be unprofitable to repeat what was said in that opinion which has been referred to by a great jurist as a "well-reasoned decision." Kepner v. United States, 195 U. S. 100, 135, 24 Sup. Ct. 797.

The substance of the appellant's claim is that our statute, permitting an appeal by the State in a criminal case, is in contravention of the Fourteenth Amendment to the [fol. 46] Constitution of the United States, and that it abridges his privileges and immunities as a citizen of the United States and deprives him of life and liberty without due process of law. As the claim of the accused raises questions as to the rights secured under the provisions of the Constitution of the United States, we look to the decisions of the Supreme Court of the United States for guidance as to the proper construction of these provisions. In Section 2 of Article IV of the Constitution of the United States, it is provided: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." In Corfield v. Coryell, 4 Wash. C. C. 371, 380, it was said that these expressions were confined "to those privileges and immunities which are * * * fundamental" and that "what these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government; * * * with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may * * * prescribe for the general good of the whole." In Ward v. Maryland, 79 U. S. (12 Wall.) 418, 430, they were said to include "the right of a citizen of one State to pass

into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens."

In the Slaughter House Cases, 83 U. S. (16 Wall.) 36, 75, these cases were quoted from at length, the court holding that the privileges and immunities guaranteed under the Fourteenth Amendment were of the same character as those [fol. 47] guaranteed under the Fourth Article of the Constitution; and in Colgate v. Harvey, 296 U. S. 404, 431, 56 Sup. Ct. 252, 259, it was said: "The purpose of the pertinent clause in the Fourth Article was to require each state to accord quality of treatment to the citizens of other states in respect of the privileges and immunities of states citizenship. It has always been so interpreted. One purpose and effect of the privileges and immunities clause of the Fourteenth Amendment, read in the light of this interpretation, was to bridge the gap left in that Article so as also to safeguard citizens of the United States against any legislation of their own states having the effect of denying equality of treatment in respect of the exercise of their privileges of national citizenship in other states;" and, on page 429, it was said: "Under the Fourteenth Amendment, therefore, the simple inquiry is whether the privilege claimed is one which arises by virtue of national citizenship. If the privilege be of that character, no state can abridge it. No attempt has been made by the courts comprehensively to define the privileges and immunities which the Fourteenth Amendment thus protects." The privileges and immunities of citizens of the United States do not necessarily include all the rights protected by the first eight amendments to the Federal Constitution against the power of the Federal Government. Maxwell v. Dow, 176 U. S. 581, 597, 20 Sup. Ct. 448. It was held in this case that a trial by a jury of twelve in a state court was not a privilege or immunity of a citizen of the United States, and one might be tried by a jury of eight. In Walker v. Sauvinet, 92 U. S. 90, 92, it was determined that "a trial by jury in suits at common law pending in the state courts is not * * * a privilege or immunity of national citizenship, which the states are forbidden by the Fourteenth Amendment to abridge."

[fol. 48] The requirement of "due process of law" is met if the trial is had according to the settled course of judicial proceedings. Murray's Lessee v. Hoboken Land and Improvement Co., 59 U. S. (18 How.) 272, 280. "Due process of law is process due according to the law of the land. This process in the states is regulated by the law of the state." Walker v. Sauvinet, supra, 93. The term "due process of law" appearing in the Fourteenth Amendment of the Constitution of the United States does not require indictment by a grand jury in a capital case in a state court, and prosecution by information, when authorized by the state law, does not offend against this clause. Hurtado v. California, 110 U. S. 516, 533, 537, 4 Sup. Ct. 111.

The accused had the benefit of a fair and impartial trial in accordance with the settled course of judicial proceedings prevailing in this State. Our statute, which permits the State to appeal with the permission of the trial court, was first adopted in 1886 and has been in force for more than fifty years. As construed in State v. Lee, supra, 282, and State v. Carabetta, 106 Conn. 114, 116, 137 Atl. 394, we conclude that it does not subject the accused to double jeopardy or abridge his privileges and immunities as a citizen of the United States, or deprive him of his life or liberty without "due process of law."

There is no error.

In this opinion the other judges concurred.

[fol. 49] In Supreme Court of Errors of Connecticut

No. 1283

State of Connecticut

vs.

Frank Palko, of Bridgeport, Fairfield County, Connecticut

On Appeal from the Criminal Superior Court

Judgment

This appeal by the defendant, claiming error in the process, record and judgment, and in the proceedings and decision of the Court on questions of law arising in the trial,

as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Superior Court, for Fairfield County, on the 22nd day of October, 1936, and came to this Court at its session at Hartford, on the first Tuesday of November, 1936; and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Criminal Superior Court, there is no error.

It is therefore considered and adjudged that there is no error.

By the Court.

Henry P. Lyons, Clerk.

Date of Judgment March 4th, 1937.

[fol. 50] DEATH WARRANT

To the Sheriff of the County of Fairfield or His Deputy, and to the Warden of the Connecticut State Prison, in the Town of Wethersfield, in Hartford County or his Deputy, Greeting:

Whereas at the term of the Superior Court in and for said Fairfield County, commencing at Bridgeport on the third Tuesday of September, A. D., 1936.

Present: Hon. Arthur F. Ells, Judge, Holding Said Court.

Frank Palko, then of Bridgeport, in said County, upon an indictment duly presented by the Grand Jurors of said County, charging that on the 30th day of September, 1935, at said Bridgeport, in said Fairfield County, he, the said Frank Palko, did kill and murder Thomas Kearney, and did thereby then and there commit the crime of murder in the first degree, having been duly arraigned and fully tried before said Court, with a jury lawfully impaneled, was by the verdict of said jury rendered on the 15th day of October, 1936, found guilty of the crime of murder in the first degree, as charged in said indictment, and said verdict was on said day duly accepted by the Court and ordered to be recorded.

And Whereas at said term of said Court, to wit, on the 15th day of October, 1936, said Frank Palko was by said Court sentenced to be remanded into the custody of the Sheriff of Fairfield County and within twenty days from

the date of said sentence to be by said Sheriff conveyed to the Connecticut State Prison in the Town of Wethersfield in the County of Hartford, and there delivered into the custody of the Warden of said Prison, to be kept by him until Monday, the 15th day of February, 1937, on which day [fol. 51] or within five days after said day, before the hour of sunrise, and within an enclosure within the prison walls, so constructed as to exclude public view, and prepared for that purpose under the direction of the Warden of the State Prison and the Board of Directors thereof, and in accordance with law, the said Frank Palko, have the punishment of death inflicted upon him by electrocution.

These are Therefore, by authority of the State of Connecticut, to command you, the Sheriff of Fairfield County, or your Deputy, to take the said Frank Palko into your custody and within twenty days from the 15th day of October, 1936, him transport and deliver into the custody of the Warden of the Connecticut State Prison, in the Town of Wethersfield, in the County of Hartford:—and you, the Warden of said Prison, are hereby commanded to thereupon take the said Frank Palko into your custody, and him safely keep in said Prison until Monday, February 15th, A. D. 1937, on which day, or within five days after said day, before the hour of sunrise, within an inclosure lawfully prepared for that purpose, within the prison walls, so constructed as to exclude public view, and prepared for that purpose under the direction of the Warden of the State Prison and the Board of Directors thereof, and in accordance with law, you or in case of your death, inability or absence, your Deputy, inflict the punishment of death upon him, the said Frank Palko, by electrocution.

Hereof Fail Not, and of your doings hereon make due return.

Dated at Bridgeport, this 15th day of October, A. D. 1936.

By the Order of Court.

Henry P. Lyons, Clerk.

[fol. 52] A warrant, of which the foregoing is a true copy, was issued by the Clerk of the Superior Court for said County of Fairfield and delivered to the Sheriff of said County of Fairfield, and after said warrant was delivered to said Sheriff and before the time fixed for said execution of said warrant, a reprieve to said Frank Palko was granted by the Governor of the State of Connecticut, and filed with

the Clerk of the Superior Court of said County on December 23rd, 1936, a copy of which reprieve is hereunto annexed.

Attest:

Henry P. Lyons, Clerk of the Superior Court for Fairfield County.

[fol. 53] REPRIEVE

STATE OF CONNECTICUT,

Executive Chambers:

To The Warden of the Connecticut State Prison, or his Deputy, to the Clerk of the Superior Court for Fairfield County at Bridgeport, to Frank Palko, now confined in the State Prison under sentence of death, and to all persons whom it may concern:

Whereas, the said Frank Palko was convicted of the crime of murder in the first degree at the September term of the Criminal Side of the Superior Court for Fairfield County held at Bridgeport, and was then sentenced on the 15th day of October, 1936, to be executed on the 15th day of February, 1937, and

Whereas, the said Frank Palko has appealed from said judgment to the Supreme Court of Errors, and

Whereas it appears that said appeal cannot be disposed of prior to said 15th day of February, 1937.

Now Therefore, it appearing to me for the reasons hereinbefore recited that a reprieve ought to be granted to the said Frank Palko, I, Wilbur L. Cross, Governor of the State of Connecticut, by virtue of the power vested in me by the constitution of the State of Connecticut, do hereby

Order, that the execution of the said sentence be suspended and postponed, and I do hereby grant a reprieve to said Frank Palko until the 26th day of May, 1937, on which day, or within five days after said day, before the hour of sunrise and within an exclosure within the prison walls, so constructed as to exclude the public view and prepared for that purpose under the direction of the Warden of the State Prison and the Board of Directors thereof, and in accordance with law, the said sentence of death passed by [fol. 54] said Superior Court shall be executed in the same manner as ordered an- adjudged by said Superior Court; and a warrant for said execution, reciting the original

sentence of said Court, and this reprieve shall be issued by the Clerk of said Superior Court and executed by the warden of said prison or his deputy in the same manner as though by the terms of said sentence it had been ordered and adjudged by said Superior Court that the said execution should take place at the time herein prescribed and ordered unless the sentence imposed by the said Superior Court upon the said Frank Palko be otherwise vacated, annulled, or set aside by due course of law.

And it is Further Ordered that the State's Attorney for Fairfield County shall cause to be filed with the Clerk of the said Superior Court a copy of this order and reprieve and that he shall also forthwith cause a copy of the same to be served upon the Warden of the State's Prison or his deputy and that a copy be left in the hands of the said Frank Palko.

In Witness Whereof, I have hereunto set my hand and seal of office, in the City of Hartford, in said State of Connecticut, this 21st day of December, in the year of our Lord one thousand, nine hundred and thirty-six.

Wilbur L. Cross, Governor, by His Excellency's Command: Philip Hewes, Executive Secretary. (Seal.)

And Whereas the Supreme Court of Errors on April 7, 1937, rendered its judgment on said appeal finding "No Error", and

Whereas the execution of said judgment of said Superior [fol. 55] Court remains to be done, pursuant to the reprieve of the Governor of Connecticut,

These are Therefore, by authority of the State of Connecticut to command you, the Warden of the Connecticut State Prison in the town of Wethersfield, in the County of Hartford, to safely keep in your custody in said State Prison the said Frank Palko until the 26th day of May, 1937, on which day, or within five days after said day, before the hour of sunrise and within an enclosure within the prison walls, so constructed as to exclude the public view and prepared for that purpose under the direction of the Warden of the State Prison, and the Board of Directors thereof, and in accordance with law, you the Warden of said Prison, or in case of your death, inability or absence, your Deputy, inflict the punishment of death upon him, the said Frank Palko, by electrocution.

Hereof Fail Not: and of your doings hereon make due return.

Dated at Bridgeport, Conn, this 19th day of April, 1937.

By Order of the Court and The Command of His Excellency, Wilbur L. Cross, Governor of the State of Connecticut. Henry P. Lyons, Clerk of the Superior Court for Fairfield County.

[fol. 56] SECOND REPRIEVE

STATE OF CONNECTICUT,
Executive Chambers:

To the Warden of the State Prison, or his Deputy, to the Clerk of the Superior Court for Fairfield County at Bridgeport, to Frank Palko, now confined in the State Prison under sentence of death, and to all persons whom it may concern:

Whereas, the said Frank Palko was convicted of the crime of murder in the first degree at the September term of the Criminal Side of the Superior Court for Fairfield County held at Bridgeport, and was then sentenced on the 15th day of October, 1936, to be executed on the 15th day of February, 1937, and

Whereas, an appeal having been taken by the said Frank Palko to the Supreme Court of Errors it was by me ordered that the execution of said sentence be suspended and postponed and I granted a reprieve to the said Frank Palko until the 26th day of May, 1937, on which day, or within five days thereafter, the said sentence of death passed by the said Superior Court should be executed, and

Whereas, the said Supreme Court of Errors having heard said appeal, found that no error had been committed in the trial of the said Frank Palko, and

Whereas, the said Frank Palko filed with the Chief Justice of the Supreme Court of Errors a petition for leave to appeal from the decision of said case to the Supreme Court of the United States, and said Chief Justice has allowed said appeal and has granted a supersedeas and stay of execution of the sentence passed upon the said Frank Palko until the 15th day of December, 1937, and

Whereas, it appears that said appeal to the Supreme Court of the United States will not be disposed of prior to the 26th day of May, 1937,

Now, Therefore, it appearing to me for the reasons hereinbefore recited that a further reprieve ought to be granted to the said Frank Palko, I, Wilbur L. Cross, Governor of the State of Connecticut, by virtue of the power vested in me by the constitution of the State of Connecticut, do hereby

[fol. 57] Order, that the execution of the said sentence be suspended and postponed, and I do hereby grant a reprieve to said Frank Palko until the 15th day of December, 1937, on which day, within an enclosure within the prison walls, so constructed as to exclude the public view and prepared for that purpose under the direction of the Warden of the State Prison and the Board of Directors thereof, and in accordance with law, the said sentence of death passed by said Superior Court shall be executed in the same manner as ordered and adjudged by said Superior Court: and a warrant for said execution, reciting the original sentence of said Court, and this reprieve shall be issued by the Clerk of said Superior Court and executed by the warden of said prison or his deputy in the same manner as though by the terms of said sentence it had been ordered and adjudged by said Superior Court that the said execution should take place at the time herein prescribed and ordered unless the sentence imposed by the said Superior Court upon the said Frank Palko be otherwise vacated, annulled, or set aside by due course of law.

And it is Further Ordered that the State's Attorney for Fairfield County shall cause to be filed with the Clerk of the said Superior Court a copy of this order and reprieve and that he shall also forthwith cause a copy of the same to be served upon the warden of the State's Prison or his deputy and that a copy be left in the hands of the said Frank Palko.

In Witness Whereof, I have hereunto set my hand and seal of office, in the City of Hartford, in said State of Connecticut, this 12th day of May, in the year of our Lord one thousand, nine hundred and thirty-seven.

Wilbur L. Cross, Governor, by His Excellency's Command: Philip Hewes, Executive Secretary. (Seal.)

Bridgeport, May 13, 1937.

STATE OF CONNECTICUT,
County of Fairfield, ss:

I hereby certify that the within and foregoing is a true copy of the original reprieve given by His Excellency, the Governor of the State of Connecticut, on the 12th day of May, 1937.

Lorin W. Willis, State's Attorney for Fairfield County.

Filed May 13, 1937. Henry P. Lyons, *Clerk.*

[fol. 58] IN SUPREME COURT OF ERRORS OF CONNECTICUT

[Title omitted]

DOCKET ENTRIES

1937.

May 11. Defendant's petition for leave to appeal to Supreme Court of United States, filed;
" " Order allowing said appeal passed;
" " Petition for supersedeas and stay filed;
" " Above petition granted as per order passed;
" " Assignment of Errors and Prayer for Reversal, filed;
" " Bond filed;
" " Statement as to Jurisdiction, with copies of opinions of Supreme Court of Errors of the State of Connecticut, filed;
" 13. Citation dated May 10th, 1937, filed;
" " Statement directing appellee's attention to Rule 12, paragraph 3 filed;
" " Acknowledgment of service, filed;
June 3. Stipulation Respecting Transcript of Record, filed;

[fol. 59] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION RESPECTING TRANSCRIPT OF RECORD—Filed June 3, 1937

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that the papers to be transmitted to the Supreme Court of the United States by the Clerk of the Supreme Court of Errors of the State of Connecticut are the following, and that this stipulation shall take the place of the præcipes required to be filed by counsel for the respective parties under and pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

1. The indictment as appears on page 1 of the printed record used in the Supreme Court of Errors of the State of Connecticut.

2. The docket entries as appear on page 1 of said printed record.

3. The judgment file as appears on pages 5-7 inclusive of said printed record.

[fol. 60] 4. The following portions of the Finding, which latter begins on page 9 of said printed record:

(a) The statement, "The defendant offered evidence to prove and claimed that he had proved the following facts:", which statement immediately follows roman numeral II. on page 16 of said printed record; and after said statement, paragraphs 80-83 inclusive on pages 21 and 22 of said printed record.

(b) Sections VI. and VII. on pages 78 and 79 of said printed record, correcting in paragraph 3 of section VI. after the word "Section" number "1" to read "9".

5. Paragraphs 5 and 6 of the Assignment of Errors on pages 92 and 93 of said printed record, preceded by the words, "The Court erred", which appear immediately following the title, "Assignment of Errors", on page 92 of said printed record.

6. The opinion of the Supreme Court of Errors of the State of Connecticut as reported in The State v. Palko, 121 Conn. 669.

7. The opinion of the Supreme Court of Errors of the State of Connecticut in The State v. Palko rendered on April 7, 1937, and reported in 122 Conn. 529.

8. All other and further proceedings in the Supreme Court of Errors of the State of Connecticut as may appear of record subsequent to the proceedings set forth in the printed record used upon appeal from the Superior Court [fol. 61] for Fairfield County, Criminal Side, to the Supreme Court of Errors of the State of Connecticut. The docket entries of said proceedings may be added by the Clerk of the Supreme Court of Errors.

9. The death warrant, including the first Reprieve of His Excellency, Wilbur L. Cross, Governor of the State of Connecticut.

10. The petition for leave to appeal and the order granting the appeal.

11. The assignments of error and prayer for reversal.

12. Bond for costs,

13. Petition and order for supersedeas and stay of execution.

14. The citation to the appellee, State of Connecticut, through its state's attorney for Fairfield County, the Honorable Lorin W. Willis.

15. Appellant's statement as to the jurisdiction of the Supreme Court of the United States.

16. Statement directing appellee's attention to Rule 12, Paragraph 3, of the Rules of the Supreme Court of the United States.

17. Acknowledgment of service of papers required under Rule 12 of the Rules of the Supreme Court of the United States.

[fol. 62] 18. The second reprieve of His Excellency, Wilbur L. Cross, Governor of the State of Connecticut.

19. The present stipulation.

It is further stipulated and agreed that the papers annexed hereto are true and correct copies of the papers described in paragraphs 1 to 19 inclusive of this stipulation with the exception of possible additional docket entries and other papers which may be appended in accordance with the provisions of paragraph 8; and that with this stipulation they constitute the complete transcript of the record to be certified to the Supreme Court of the United States at Washington, D. C., and that the Clerk of the

Supreme Court of Errors of the State of Connecticut may certify this transcript of the record and other papers without further formality.

Dated at Bridgeport, Connecticut, this 3rd day of June, 1937.

The Appellant, Frank Palko, by David Goldstein, His Attorney. The Appellee, State of Connecticut, by Lorin W. Willis, State's Attorney for Fairfield County.

[*File endorsement omitted.*]

[fol. 63] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 64] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed June 15, 1937

Comes now the appellant in the above entitled cause and adopts his assignments of error as his statement of the points to be relied upon in the argument in this court.

Appellant further represents that the whole record, as on file, is necessary for the consideration of the case.

Dated at Bridgeport, Connecticut, this 10th day of June, 1937.

The Appellant, Frank Palko, by David Goldstein, His Attorney.

Acknowledgment of Service

Due and timely service of the above statement of points to be relied upon and designation of the parts of the record to be printed is hereby acknowledged, and the appellee [fols. 65-67] hereby agrees that the said designation includes all parts of the record material and necessary to the consideration of the case, and hereby expressly waives all right to file a counterdesignation of parts of the record to be printed.

Dated at Bridgeport, Connecticut, this 14th day of June, 1937.

The State of Connecticut, Appellee, by Lorin W. Willis, State's Attorney for Fairfield County, State of Connecticut.

[fol. 68] [File endorsement omitted.]

Endorsed on cover: File No. 41,616. Connecticut Supreme Court of Errors. Term No. 135. Frank Palko, appellant, vs. State of Connecticut. Filed June 11, 1937. Term No. 135, O. T., 1937.

(1661)